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ABSTRACT

Latinos need the protection of the proposed Fair Housing Amendments of 1987 and the active support of the Department of Housing and Urban Development (HUD) to overcome housing discrimination. Latinos are both disproportionately poor and inadequately housed, but low income alone cannot fully explain the poor housing conditions under which many Latinos live. Historically, fair housing legislation and litigation has been concerned with discrimination against Blacks. While considerably less research exists on the nature and extent of housing discrimination against Latinos than on discrimination against Blacks, the available data show that housing discrimination against Latinos is pervasive. HUD-funded studies in Dallas (Texas), Denver (Colorado), Boston (Massachusetts), and other urban areas indicate a high incidence of housing discrimination against minority group members in general and Mexican Americans in particular. The proposed Amendments would improve the enforcement and extend the protection of the Fair Housing Act of 1968. However, HUD cannot enforce the law until an individual has filed a complaint of discriminatory treatment. HUD needs to educate Latinos about their legal rights and encourage them to file complaints when they encounter discrimination. A list of 47 references is attached. (FMW)

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FAIR HOUSING AND LATINOS

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FAIR HOUSING AND LATINOS

I. INTRODUCTION

The issue of fair housing and the problems of housing discrimination do not receive the attention they deserve. In addition, the issue of fair housing is usually discussed solely in the context of racial bias. While the data clearly show that Black Americans continue to face severe housing discrimination, too little attention has been focused on similar problems faced by Latinos. This article will focus on the housing conditions of Latinos in this country and how fair housing policies -- or the lack thereof -- affect this community. It will also summarize the results of studies documenting housing discrimination against Latinos, and make recommendations for improving the effectiveness of fair housing enforcement in the Latino community.

II. FAIR HOUSING LAWS

A. History of Fair Housing Legislation

Prior to 1962, there were no federal laws or policies outlawing discrimination. For the most part, local elected and appointed officials and influential members of the housing industry dictated housing policies. As Blacks migrated to urban areas in the early part of the 20th century, some cities adopted zoning laws prohibiting persons from purchasing, selling or occupying property in a manner that would destroy the "racial purity" of a given block or neighborhood.1

In urban centers which did not adopt such zoning laws and in other cities where zoning laws were eventually struck down as unconstitutional,2 they were often replaced by racially restrictive covenants between buyers and sellers, which were enforceable in court until 1948, or by other tactics of the real estate industry that achieved the same results.3

"Racial redlining" and "racial steering" maintained rigidly segregated neighborhoods in many areas, although these techniques are now illegal, they are still being practiced sometimes in more subtle ways. The term "racial redlining" describes the practice of lenders who drew "red lines" to delineate areas of a city or town in which they would not extend credit because of the racial make-up.4 Insurance companies began to follow the same practice. If a neighborhood was either all minority, appraisers often considered certain areas to be "unstable" or otherwise poor financial risk. The result was often an appraisal well below the agreed upon price, which led to a denial of the mortgage request.5

Another common technique was "steering," in which homeseekers were shown homes only in certain parts of town where persons of their race or ethnicity were in the majority.

Another technique used to promote segregated housing was "blockbusting". This occurred when a real estate broker went into a White community and sold a home to a minority family, then informed the neighbors that it would be wise to sell immediately before the prices declined and the area became "undesirable".6 This often led to panic selling and re-segregation, as a neighborhood quickly became all minority.

In the 1930s, during the Depression, the federal government entered the housing arena to prevent the collapse of the housing industry and to protect

the investments of homeowners. The federal policy then largely adopted the assumptions of local governments and the housing industry regarding the desirability of racially dual markets.

Federal housing entities like the Federal Housing Administration (FHA), the Federal Home Loan Bank Board (FHLBB) System, and the Federal National Mortgage Association (FNMA) were designed to safeguard and facilitate homeownership, but they included no provisions for assisting minorities in securing decent housing.7 Public housing was the only program which recognized the right of participation by minorities -- and then only on a segregated basis.

After World War II, the federal government began to take an active role in aiding the housing industry to meet the demand for new homes. The Housing Act of 1949 established a national housing objective for the first time. The federal government underwrote the development of large subdivisions of single-family homes in areas outside the central cities by insuring home mortgages for middle-income home buyers and guaranteeing mortgages for veterans under the G.I. Bill of Rights. Yet federal policy did not seek to assure that minorities would share in the new housing boom.8

Federal policy continued to support segregated public housing and discriminatory practices in FHA and Veterans Administration (VA) programs even after the 1948 Supreme Court decision Shelley v. Kraemer,9 which outlawed the enforcement of racially restrictive covenants, and the 1954 decision Brown v. Board of Education,10 which made clear the unconstitutionality of "separate but equal" public facilities.

While the suburbs were developing as White and middle class, the cities remained a patchwork of minority and White neighborhoods. Ghettos and barrios -- largely segregated neighborhoods in which minorities lived -- expanded into White neighborhoods, which experienced "blockbusting" caused

by unscrupulous real estate brokers. Often minorities paid prices above market value for their housing, yet were denied the benefits of the low- or no-down payment mortgage loans that lenders made when federal insurance was available. Discrimination and segregation in housing continued through the decade of the 1950s often with the support of the federal government.11

Discrimination in federally-subsidized housing emerged as a public issue during the presidential campaign of 1960. Presidential candidate John F. Kennedy stated that, if elected, he would issue an executive order to eliminate this injustice with "a stroke of the pen."12 On November 20, 1962, Executive Order 11063 on Equal Opportunity in Housing was signed by President Kennedy Although the Executive Order represented the first national policy supporting equal housing opportunity, it was narrowly constructed to cover only federally-assisted housing contracted after the date the Order was signed; therefore, a dual housing private market was maintained.

The Executive Order called for the abandonment of discrimination in federally-assisted housing that was built after the signing of the Order, and placed severe sanctions upon violators, including cutting off funding and barring housing developers and realtors from future participation in federal housing programs. But it soon became apparent that the Order was inadequate Although discrimination was barred in federal subsidized housing, the law did not cover the private market.

As a rule, the private housing industry did not adopt non-discriminatory policies. In fact, many in the housing industry -- in both the sales or rental market -- believed that adopting such a policy would place them at a competitive disadvantage.13

In 1965, fair housing legislation was introduced by President Lyndon Johnson. The following year the House of Representatives passed a far-

reaching fair housing bill, but a filibuster prevented it from coming to a vote in the Senate.14

In 1968, three major developments changed the political landscape of the fair housing issue. In April, responding to the grief and anger caused by the assassination of Reverend Martin Luther King, Congress enacted Title VIII of the Civil Rights Act of 1968 -- the Fair Housing Act -- which broadly prohibited discrimination in both the private and public housing markets based on race, color, religion, sex, or national origin. However, the law was passed only after extensive and bitter debate, and legislative compromises limited the bill's enforcement provisions.

Second, through Jones v. Mayer, the Supreme Court reexamined the coverage of the Reconstruction Civil Rights Act of 1866 and concluded that it was broad enough to provide Black citizens with redress against private as well as government discrimination in housing transactions.15 Third, that summer, Congress passed a Housing and Urban Development Act authorizing new housing programs for low-and moderate-income families that would provide volume and choice of location.16

Title VIII provided certain enforcement mechanisms designed to achieve fair housing goals First, a victim of housing discrimination could seek relief by filing a complaint with the Department of Housing and Urban Development (HUD). Second, it created a private right of action for victims of discrimination. And third, it gave the Attorney General the authority to initiate litigation in cases where there was a "pattern or practice" of discrimination.

As regulations were adopted and HUD began to implement the law, deficiencies became evident. Under the law, a victim of housing discrimination can report the violation to HUD. The Department will then investigate and try to bring the two parties together to conciliate their

differences. But HUD does not have the authority to issue "cease and desist" orders to those found guilty of violating the law, or the power to otherwise enforce its conciliation efforts. Therefore, HUD has been largely unsuccessful in getting landlords and sellers of housing to take the process seriously.

The 1968 law provides another alternative to a victim of housing discrimination, who can initiate a private lawsuit against the landlord or the seller. However, this takes considerable time and money. Besides having to hire an attorney and taking time off from work to appear for depositions and in court, the victim must go through a lengthy litigation process which is often further delayed by overcrowded court calendars.

The Justice Department can also sue to enforce fair housing laws, but only where the Attorney General believes there is a "pattern or practice" of housing discrimination, or in cases raising an issue of general public importance. This provision of the law, as a result, has little impact on practices in the housing market.17 During the period from November 1, 1983 through January 31, 1987, the Justice Department filed a total of 53 lawsuits, fewer than 18 per year.18

There have been several unsuccessful attempts since the enactment of the Fair Housing Law to strength Title VIII's enforcement provisions.19

B. Pending Fair Housing Legislation

At the beginning of the 100th Congress, Senators Edward M. Kennedy (D-MA) and Arlen Specter (R-PA) and Representatives Don Edwards (D-CA) and Hamilton Fish, Jr. (R-NY) introduced the Fair Housing Amendments Act (S. 558/H.R. 1158). The bill would strengthen the Fair Housing Act of 1968 in two ways: (1) by strengthening the enforcement provisions of the Act, and (2) by expanding protected classes to include disabled persons and families with children.

The proposed amendments would increase HUD's ability to enforce fair housing by providing the victim a hearing before an Administrative Law Judge who would hear the case and make the final decision, if HUD were unable to reach conciliation. Furthermore, the complainant would have the right to intervene in the proceeding, and the decision of the Administrative Law Judge could be appealed to the federal court of appeals for the circuit in which the discriminatory practice was alleged to have occurred.

When discrimination was found by the Administrative Law Judge, equitable and declaratory relief (including orders requiring the respondent to sell or rent the house to the complainant) as well as compensatory and punitive damages could be awarded (similar administrative enforcement procedures are currently used by 28 other federal agencies and departments). In addition, the bill would permit an application to be made to a federal court for an order to hold a house or apartment off the market while the case is being decided.20

Both the Senate Subcommittee on the Constitution and the House Subcommittee on Civil and Constitutional Rights held hearings on the Fair Housing bill during 1987. During the summer, the bill was reported out of the Senate Subcommittee. It is expected that both the Senate and the House will take action on this bill early in the second session of the 100th Congress which begins in January 1988.

III. LATINO HOUSING STATUS AND PROBLEMS

Fair housing legislation is extremely important to Latinos because they face severe housing problems, including housing discrimination. The Latino population is one of the fastest growing groups in the country. A recently released report from the Bureau of the Census shows that between 1980 and

1987, the Latino population grew from 14.5 million to 18.8 million, excluding about 3.3 million Puerto Ricans living on the Island. In 1987, Latinos accounted for 7.9% of the total U.S. mainland population, compared to 6.4% in 1980. A forthcoming study by Cushing N. Dolbeare for the National Council of La Raza showed that in 1983, more than three-quarters (78%) of Latino households lived in metropolitan areas and 83% lived in areas classified as "urban" by the Census Bureau About 41% lived in the West, 32% in the South, 19% in the Northeast, and 8% in the Midwest.21

Latinos suffer from lower incomes and higher poverty rates than non-Latinos; in 1986 27.3% of Latino families lived below the poverty level, compared to 11.0% of White families and 31.1% of Black families. Median Latino family income was only 65% that of Whites.22 These demographic data have serious implications for housing status.

The most recent comprehensive data on Latino housing status comes from the 1983 Annual Housing Survey, which found that Latinos are less likely than Whites or Blacks to be homeowners -- 57% were renters and 43% homeowners. This compares to 65% homeowners among Whites and 55% homeowners among Blacks.

In 1983, about 79% of all Latino households lived in housing that was built before 1970, compared to 73% of Whites and 86% of Blacks. Just over half (51%) lived in single-family structures compared to 65% of Whites and 48% of Blacks, and 90% lived in buildings of three stories or less, as compared to 96% of Whites and 92% of Blacks. Only 3% lived in mobile homes, compared to 6% of Whites and 3% of Blacks.23

Housing conditions for much of the Latino community are inadequate. An unpublished HUD study showed that in 1983 about one-third of all Latino households live in physically inadequate or overcrowded housing, compared to only one-tenth of White households.24

The affordability of housing is a more critical problem for Latinos than housing quality. The lower a household's income, the higher the portion of income that must be spent on housing.25 According to the National Council of La Raza study, very-low-income households typically spend well over half their incomes for shelter, including utilities. This leaves insufficient resources for such other necessities as food and clothing.

In 1983, the median income of all Latino households was $15,115. The median family homeowner income was $22,100, compared to $11,100 for renters. About one-quarter of Latino households with incomes under $10,000 per year were homeowners; 45% of all Latino homeowners had incomes below $20,000, as did 79% of Latino renters.26

That year, some 28% of all Latino households had incomes below the poverty level and the income of one household in ten was less than half the poverty level. As a result, one Latino household in ten paid more than 70% of their income for housing, and two in five spent more than 30% of their income for housing.27

One factor which contributes to Latino housing problems is the lack of adequate rental housing for families with children and large families. In 1986, 26.6% of Latino families had five or more members, compared to 13.7% of non-Latino families.28

The 1985 Current Population Survey shows that over 75% of Latino families had three or more persons, a rough proxy for the presence of children, compared to less than 60% of non-Hispanic families.29

A 1980 HUD study found that 25.5% of all rental units in the United States did not allow children, and another 50% had policies which restricted the ability of families with children to rent the units. Such restrictions included limits on the number of children who could occupy a unit, limits on

the number of units in an apartment complex where families with children could reside, limits on the age of child occupants, and prohibitions on children of the opposite sex sharing the same bedroom.30 Thus Latinos face housing problems, resulting from low income and family size.

IV. FAIR HOUSING AND LATINOS

A. Research Findings

1. Overview

Latinos are both disproportionately poor and inadequately housed, but low income alone cannot fully explain the poor housing conditions in which many Latinos live. According to a 1983 internal HUD study:

> When common factors contributing to housing deprivation are taken into account, differences in housing conditions among Whites, Blacks, and Hispanics are narrowed somewhat, but sizeable differences still remain... Blacks and Hispanics are twice as likely as Whites to be either inadequately housed or overcrowded, even when they have similar financial resources.31

It is clear that factors other than income are partially responsible for poor Latino housing conditions. One of these factors is housing discrimination. While there has been considerably less research on the nature and extent of housing discrimination against Latinos than on discrimination against Blacks, the available data show that housing

discrimination against Latinos is pervasive. The following subsections describe research findings on housing discrimination and Latinos in selected urban areas.

2. Dallas

Most studies of housing discrimination have focused on the housing experiences of Blacks, and far less is known about the nature and extent of housing discrimination against other minorities. A 1979 HUD "audit" in Dallas was the first HUD research to focus on the extent of housing discrimination against Latinos.32 It had often been assumed that Latinos would suffer less than Blacks from housing discrimination for two reasons: Latinos were a smaller subpopulation, and the income of Latino renters was substantially greater than that of Black renters.33 The results of the audit showed otherwise.

The Dallas study found that 42% of dark-skinned Mexican Americans and 16% of light-skinned Mexican Americans were given false information on the availability of rental units. The chance of dark-skinned Mexican Americans experiencing at least one instance of discrimination in a typical housing search was 96%, and the probability of light-skinned Mexican Americans experiencing similar discrimination was about 65%.

The incidence of discriminatory treatment against dark-skinned Mexican Americans was found to be far greater than that against either Blacks or light-skinned Mexican Americans. Discriminatory treatment against dark-skinned Mexican Americans regarding availability of a unit was two and one-half times as great as that against either Blacks or light-skinned Mexican Americans. Furthermore, discriminatory treatment against dark-skinned Mexican Americans on terms and conditions of the contract was also far greater.34

3. Denver

A 1982 HUD-funded study in Denver also found evidence of housing discrimination against Latinos. When teams of White, Black and Latino auditors were sent out to homes that were advertised for sale, the White auditors received considerably more information when they asked about homes similar to the advertised house in the same general area or in other locations. One in three Latino auditors was told that there were no homes available which were similar to the advertised home and in the same general area, compared to one in five White auditors. Furthermore, 60% of Latino auditors were told of no similar homes in other areas, compared to 31% of White auditors. These differences in the degree to which Latino and White auditors were informed of housing alternatives were sizeable and statistically significant.35

Discrimination against Latinos regarding housing availability was not found to be as widespread in the rental housing market, but some differences in the treatment of Latino and White auditors strongly suggest discrimination. For example, Latino auditors were twice as likely as Whites to be told that the advertised units were unavailable, and also twice as likely not to be told of other rental housing possibilities which might meet their needs. In neither case, however, were the differences statistically significant.36

4. Boston

A Boston telephone survey found major differences in treatment of Whites and minorities. In a HUD funded-study in 1981, a telephone survey was done of selected realtors who were advertising units for rent. The test teams consisted of three persons: one that would normally be

identified by voice as White, one as Black, and one as Latino. In all 42 tests that were conducted, the White testers were invited to come to the office to be shown a unit, while Black and Latino testers were informed that no units were available 31 times.

Site visits were carried out on 47 firms including those that were already covered by the telephone survey and continued to advertise units for rent. In 23 of 47 tests only the White testers were shown units while Black and Latino testers were told nothing was available.37

5. Other Studies

A 1986 HUD-funded study in Phoenix found evidence of discriminatory rental practices against both Blacks and Latinos. In 13% of the audits, Blacks and Latinos were asked to pay higher rents and deposits while Whites were given a variety of rental inducements.38

Other surveys finding evidence of housing discrimination were performed in Houston and in San Jose, California. In both cases, Blacks encountered more discrimination than Latinos. In 1973, a Houston audit found that at "White-occupied" apartment complexes, Black auditors encountered at least one form of discriminatory treatment in 42% of their visits, compared to 10% for Latino auditors.39 A 1978 study in San Jose found that Black auditors encountered some form of discriminatory treatment in 58% of their visits, compared to 20% for Latino auditors.40

B. Need for Latino-Focused Efforts

Federal fair housing laws need more effective enforcement mechanisms to resolve housing discrimination complaints overall and to expand coverage to families with children and the disabled. But additional efforts

specifically focused on Latinos are also essential to effectively address housing discrimination against Latinos.

The legislation now being proposed in Congress is limited to improving the effectiveness of the enforcement process after a complaint is filed. It does not address the need for action to increase the likelihood that Latinos encountering housing discrimination will file complaints. Despite evidence of pervasive housing discrimination against Latinos, HUD data reveal that Latinos tend to file very few complaints, according to the data;

- From Fiscal Year 1980 through Fiscal Year 1985, formal complaints filed with HUD-certified fair housing state and local agencies by Blacks alleging discrimination totaled 14,172, while such complaints from Latinos totaled 1,328, a ratio of about 11:1; yet the Black population is only about 37% larger than the Latino population.41

- This pattern was consistent over the six-year period. The ratio of Black-to-Latino complaints exceeded 10:1 in every year except Fiscal Year 1983 (9:1).42

- During the same period, complaints from Latinos as a percentage of total complaints ranged from 5.4% to 7.2%, and exceeded 7% in only one year.43

There are several possible reasons for this differential. The Black population is somewhat larger, and some of the above-cited studies suggest that in some markets, Blacks are more likely to encounter discrimination than Latinos. It is also possible that Blacks are more likely to encounter

overt forms of discrimination than Latinos, and are therefore more likely to know that they have been discriminated against. However, these factors do not fully explain the extent of the difference in complaints.

Latinos are less likely to file civil rights complaints in general, and fair housing complaints in particular. Several important reasons for this have been suggested. First, many Latinos may not have a complete understanding of their rights; and second, all but the most blatant forms of housing discrimination frequently are not recognized as illegal discrimination by the victims. Some examples of subtle forms of housing discrimination, e.g., "steering," false information on the availability of rental units, and differential treatment in lending practices, are difficult for a victim to identify.

Furthermore, the weak enforcement mechanism in the present fair housing law may contribute to the low numbers of complaints filed by Latinos. The lengthy period required to reach conciliation and the lack of any real redress to the victim may deter Latino victims from filing complaints. In addition, rental agents and realtors are aware that they are not likely to be penalized for practicing illegal housing discrimination, and therefore, are not often deterred from discriminating. These factors may limit confidence within the Latino community in the HUD conciliation process, thus reducing the number of complaints.

Language differences may exacerbate the above-cited factors. HUD no longer publishes brochures explaining fair housing laws in languages other than English, thus reducing the ability of limited-English proficient persons to understand their rights under the law. Limited-English proficiency may also hinder Latinos from fully understanding what realtors or rental agents are telling them, thus limiting their ability to detect discrimination.

Another often ignored factor that helps to explain differences in the propensities of Blacks and Latinos to file civil rights complaints is the disparity in the relative strength of civil-rights-oriented institutions in the two communities. The Black community has a long and proud tradition of strong, active civil rights groups such as the NAACP and the National Urban League, which inform Black Americans of their rights. Their counterparts in the Latino community are much younger, have fewer resources, and in many cases are much more fragile.

The lack of strong civil rights-oriented Latino institutions is especially true with respect to fair housing, and HUD has not been effective in addressing this problem. A review of HUD grants to public and private fair housing groups reveals that very few grants have gone to groups emphasizing services to the Latino community. Moreover, HUD has not carried out a single fair housing initiative focusing on Latinos since the 1979 Dallas survey.44 To the extent that building the capacity of state and local groups is at least partially a function of the availability of resources, it is not surprising that there are few strong local fair housing groups focusing on fair housing for Latinos.

While HUD has not focused on Latino fair housing needs, potentially effective mechanisms for addressing housing discrimination against Latinos do exist. The Fair Housing Enforcement Demonstration Project, sponsored by HUD and the National Committee Against Discrimination in Housing (NCDH), provides some insight into ways in which increased anti-discrimination activity can be generated. Under the Demonstration Project in 1981, small grants were provided to nine local fair housing groups to conduct fair housing testing and a limited amount of outreach and public information.

By all accounts, the Demonstration Project was successful, and resulted in a series of impressive achievements:

- In each area participating in the project, complaints rose dramatically. There was also a relatively high rate of success in complaint resolution.45

- During the two-year period of the project, HUD recorded a dramatic increase in complaints (from 4,000 to 5,300); over 50% of this increase occurred in areas where the demonstration was being conducted.46

- A modest amount of federal funding generated an extremely high level of activity. It is estimated that each dollar of project funding generated two to three dollars in activity by the local groups.47

At least one of the demonstration groups, the Greater Dallas Housing Opportunity Council, carried out Latino-focused activities. Its efforts resulted in some increase in complaints by Latinos, although the data do not permit precise quantification of Latino-specific effects.

The activities carried out under the Demonstration Project clearly address many of the factors contributing to the low level of fair housing complaints by Latinos. The local groups increased awareness of housing discrimination, provided counseling and technical assistance in filling complaints, and established a strong institutional presence in their respective communities.

V. CONCLUSIONS

The National Council of La Raza believes that strengthening the effectiveness of fair housing laws in protecting the rights of Latinos requires two major policy initiatives First, the strengthening of the fair housing laws is crucial, and must include by expanding coverage and establishing more effective enforcement mechanisms to resolve complaints. Latinos, particularly families with children, need timely resolution of their complaints, and typically cannot afford remedies which require them to take individual legal action.

Second, there should be an effort to increase the capacity of Latinos to protect their rights to equal housing opportunities, through public education and outreach. This can be partially achieved through the successful passage of the Fair Housing Amendments of 1987.

However, the new legislation alone will not be sufficient. A Latino-focused fair housing initiative should be established within HUD This initiative should include the following:

- Support of systemic testing including Latino, White, and Black teams, in various locations, to provide more solid data on Latinos and the housing discrimination they face.

- Funding to Latino groups which are involved in fair housing activities, to support outreach and public education, receiving and recording of complaints, conducting of tests, and referral of documented complaints to HUD.

- Availability through HUD of all necessary bilingual materials and personnel in order to inform the Latino community about their equal housing opportunities and about complaint procedures.

The data show that housing discrimination is not an occasional incident, it is too often the norm. Responsible, active federal, state, and local policies are needed to protect the civil rights of Latinos in this country in their search for decent housing.

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